

## FIFTEENTH DIVISION

[ CA-G.R. SP. No. 127166, February 20, 2015 ]

**FORTUNE COMMODITIES, INC., PETITIONER, VS. DOMINION  
CONDOMINIUM CORPORATION, RESPONDENT.**

### D E C I S I O N

**GAERLAN, S.H., J.:**

For consideration of this Court is a Petition for Review<sup>[1]</sup> pursuant to Rule 43 of the 1997 Rules of Civil Procedure, in relation to A.M. No. 04-9-07-SC (Mode of Appeal in cases formerly cognizable by the SEC), to seek the review and reversal of the 19 July 2012 Decision<sup>[2]</sup> of Branch 149 of the Regional Trial Court of Makati City, sitting as a Special Commercial Court, in Civil Case No. 06-991 involving an intra-corporate controversy. The dispositive portion of which reads:

***WHEREFORE**, premises considered, judgment is hereby rendered directing that (1) plaintiff be restored its parking spaces allocation, particularly parking space nos. 5, 6, 7, 8, 9, 10 and 11, as distributed and allocated under Section 6 (a) of the Master Deed with Declaration of Restrictions of the Dominion Office Condominium Building; (2) plaintiff must pay defendant the total amount of outstanding condominium dues minus the interests and penalties thereon as of June 28, 2011, including the current year's condominium dues and for the successive years; and interest and penalties will accrue after ten (10) days from receipt of this decision, until the subject matter of condominium dues be fully paid. Hence, plaintiff must pay the subject condominium dues within ten (10) days from receipt of this decision, otherwise the interest and penalties will accrue.*

*Finally, the issue of the decrease of appurtenant interest in the condominium building is hereby dismissed for insufficiency of evidence.*

*The counterclaim is likewise dismissed for insufficiency of evidence.*

*Cost de officio.*

**SO ORDERED.**

The factual antecedents of the case are as follows:

Petitioner Fortune Commodities, Inc. (Fortune), represented by its Director and Chairman Ramon Y. Gonzales, Jr. (Gonzales), is a domestic corporation duly organized and existing under and by virtue of Philippine laws with principal place of business located at the 5/F Dominion Condominium Building, 833 A. Arnaiz Avenue, Makati City.<sup>[3]</sup>

The respondent on the other hand is Dominion Condominium Corporation (Dominion) also a domestic corporation duly organized and existing under and by virtue of Philippine laws with principal place of business located at the Ground Floor of the Dominion Building, No. 833 A. Arnaiz Avenue, Makati City. It may be served, however, with any and all processes of the Honorable Court through its counsel of record, Balane Tamase & Alampay with office address at the 12/F PDCP Bank Centre Corner Rufino and Leviste Streets, Salcedo Village, Makati City.<sup>[4]</sup>

The Dominion Building has been constituted into a condominium under R.A. No. 1459 as amended, otherwise known as the Condominium Act, and the Master Deed with Declaration of Restrictions was executed for the purpose.<sup>[5]</sup>

On 16 September 1982, Fortune acquired for valuable consideration, Units E-1 and E-2 which comprise the entire Fifth Floor of the Dominion Building as evidenced by Condominium Certificate of Title (CCT) No. 3538<sup>[6]</sup>.

On 05 August 1983, herein respondent has taken over as the sole management body charged with the operation, general administration and maintenance of the Dominion Building, where it presently holds office and where title to both the common and limited common areas thereof is held by it.<sup>[7]</sup>

By virtue of its ownership of the said units, Fortune automatically became and still remains to date, a member of the respondent according to Section 8 of the Master Deed with Declaration of Restrictions, which clearly states:

(b) All Unit owners shall automatically become members of the Condominium Corporation, to the exclusion of others.<sup>[8]</sup>

CCT No. 3538 covers not only Units E-1 and E-2 but also seven (7) parking spaces with a total area of One Hundred Five (105) square meters. The Master Deed particularly Section 6(a) thereof specifically provides -

Section 6. x x x

(a) Exclusive use of the parking spaces within the project, as is now existing or as may hereafter exist, shall be allocated as equally as possible among all the Unit owners in the Project. Of the forty six (46) parking spaces presently existing, each Unit owner shall be entitled to exclusive use of the following parking spaces as follows:

<b>Floor</b>	<b>Unit</b>	<b>Area No.</b>	<b>Parking Space No.</b>
	x x x	x x x	x x x
Fifth Floor	E	1	6, 7, 8
" "	E	2	9, 10, 11, 5
	x x x	x x x	x x x

On 8 October 2004, the Housing and Land Use Regulatory Board (HLURB), in its letter<sup>[9]</sup> in response to respondent's prior request for advice on the matter of the unequal allocation of parking spaces in the condominium, stated that the allocation was the most equitable under the situation or circumstance prevailing when the Master Deed was crafted in 1976 by the proponent of the condominium project<sup>[10]</sup> and that under the circumstances, the provisions stated in the Master Deed should prevail.<sup>[11]</sup>

While herein petitioner has been assigned and is in actual use of parking spaces nos. 5, 6, 8, 9 and 10, it has also been assigned parking space no. 32. This was assigned to it in lieu of its allocated parking space no. 11 which was set aside and assigned by the respondent to another unit owner, Philippine Advertising Counsellors, Inc. (PACI). Based on Entry No. 48467/S-2325<sup>[12]</sup> annotated on the Transfer Certificate of Title (TCT) No. S-50568<sup>[13]</sup>, which covers the parcel of land on which the Dominion Building stands, as far back as 14 September 1981 an Absolute Sale was entered into by herein respondent with PACI covering Units G, 7<sup>th</sup> Floor and H, 8<sup>th</sup> Floor of the Dominion Building which also included parking spaces nos. 1, 2, 3, 4, 11, 25, 27, 29, 30, 31, 33 and 34.<sup>[14]</sup> The petitioner alleged that this is the reason for the respondent's failure to turn over parking space no. 11 to petitioner.<sup>[15]</sup>

Further, the petitioner averred that one of the parking spaces allotted to it, particularly parking space no. 7, is in fact non-existent.<sup>[16]</sup> The respondent, however, claimed that the same is existent but it is small compared to the required minimum size of 12.5 square meters, and its location does not provide unimpeded ingress and egress to a motor vehicle. It is located in a tight corner in the basement not suitable for parking.<sup>[17]</sup> Nevertheless, Fortune has been paying since 1990 the realty taxes due on all the parking spaces assigned to it.<sup>[18]</sup>

Petitioner repeatedly called respondent's attention through its Board of Directors, Building Administrator and Corporate Secretary on the issue on parking spaces nos. 7 and 11.<sup>[19]</sup> Fortune likewise reiterated its request and demands in its letter dated 27 June 2005<sup>[20]</sup> and 25 January 2006<sup>[21]</sup> to respondent. The same however remained unheeded and no resolution on the issues were arrived at.

Thus, in protest over respondent's inaction, petitioner was constrained to withhold the payment of the association/condominium dues and other charges beginning in the late 1990's.<sup>[22]</sup> Unfortunately, however, in order to reach out to respondent for an amicable resolution of the issue on the parking spaces, Fortune should settle and update its account up until 2002 for both Units E-1 and E-2.<sup>[23]</sup> Respondent, however, continued to refuse Fortune's requests and even imposed penalties and interest charges on its accounts.<sup>[24]</sup>

Fortune attempted to update its account initially for Unit E-2, pending resolution of the issue on the parking spaces.<sup>[25]</sup> According to Gonzales, in a discussion he had with the then building administrator Jose Francisco Rivero sometime in 2005, respondent impressed upon him that a waiver of the interest and penalties charged would not be a problem.<sup>[26]</sup> Thus, in its 23 May 2005<sup>[27]</sup> letter to the respondent, Fortune through Gonzales tendered its payment in full for its account on Unit E-2 as

of 18 March 2005<sup>[28]</sup> by way of a check in the amount of P438,498.58 which did not include the interest and penalty charges. However, the respondent in its reply letter dated 12 May 2005<sup>[29]</sup>, rejected the tender of payment and returned the check and cited Board Resolution No. 04-03<sup>[30]</sup> passed on 25 November 2004 which adopted a policy on the imposition of interest and penalty charges on delayed payments. Attached to the same reply letter is a Summary of Interest Payments<sup>[31]</sup> for the period of January to April 2005 and the 14 December 2004 Memorandum from the Corporate Secretary stating the same Board Resolution. In his 13 May 2005<sup>[32]</sup> response letter, Gonzales again tendered payment for its current account for the month of June 2005 by way of another check in the amount of P13,310.76, excluding interest and penalty charges. In its 18 May 2005<sup>[33]</sup> letter, respondent's corporate secretary assured Gonzales that the latter's request for waiver of the interest and penalties will be included in the agenda for the next Board meeting.<sup>[34]</sup> Thereafter, respondent accepted the check payments for the account of Unit E-2 for the months of June, July, August and September 2005 without any interest and penalty being charged. However, the respondent returned the checks and insisted on the settlement as well of the supposed accrued interest and penalty charges. The respondent also successively rejected and returned to the petitioner check payments for the account of Unit E-2 for the months of October, November and December 2005. In its 19 January 2006 letter<sup>[35]</sup>, respondent through its external counsel, demanded the payment of the alleged total outstanding amount of P608,049.69, inclusive of all interest and penalty charges.<sup>[36]</sup>

Gonzales then met and conferred with respondent's Chairman of the Board of Directors, Rodolfo V. Cruz, where they arrived at some understanding about petitioner's issues, thus, on 23 March 2006, Fortune tendered to Dominion two (2) checks in the amounts of P150,000.00<sup>[37]</sup> and P388,561.36<sup>[38]</sup> in full settlement of the account of Unit E-2 up to 31 December 2005. However, these checks were also returned with its 30 March 2006<sup>[39]</sup> letter reiterating Dominion's policy on the imposition of interests and penalty charges on late payments. Despite the said rejection, petitioner on 31 May 2006<sup>[40]</sup> still tendered a check in the amount of P614,990.66 as full payment excluding interest. In a letter reply dated 20 July 2006, the respondent's corporate secretary, upon authority of the Board of Directors, pursuant to its Special Meeting on 19 July 2006, accepted the said check as partial payment and informed the petitioner that the association will still collect unpaid dues on the entire 5th floor and that petitioner remains delinquent until the full payment thereof.<sup>[41]</sup> This prompted Fortune to write Dominion and inform the latter that it is withdrawing its check. Further stated in the said letter was that the conditions set forth in the 20 July 2006 letter were complicating the issues in its attempt to update the outstanding account of Unit E-2.<sup>[42]</sup>

Petitioner alleged that in order to defeat its claims to the subject parking spaces, Dominion and its Board of Directors for the term 2003-2004 did not call for and hold the annual General Membership meeting for the same term. Gonzales claimed that Fortune was not served any notice of any scheduled General Membership meeting where presumably a new Board of Directors was elected and also where Board Resolution No. 04-03 may have been passed which authorized the imposition of interest and penalty charges on delayed payments.<sup>[43]</sup> Further, for the term 2005-2006, if one had been set and actually held where a new Board could and should

have been elected, there was no such notice as well.<sup>[44]</sup> For the 2006 Annual General Membership meeting, the same was postponed for three (3) times, until finally it was held on 1 September 2006.<sup>[45]</sup> Respondent served the notice to petitioner a few hours before the scheduled meeting which is in violation of the provision in the By-Laws that notice therefor be given at least seven (7) days prior to the scheduled meeting, so much so that the petitioner failed to attend.<sup>[46]</sup>

Fortune averred that it could have raised in the meeting the matter of its parking spaces and the reduction of its appurtenant interests in the entire condominium property from 6.648% and 6.493% for Unit E-1 and Unit E-2, respectively, to 5.875% for Unit E-1 and 5.74% for Unit E-2, as shown in the billings sent by respondent to the petitioner for dues and charges from year 2000 to 2003.<sup>[47]</sup> In its 25 January 2006 letter, Fortune protested against the reduction of its interest. The same was, however, ignored by the respondent.<sup>[48]</sup>

Thus, the petitioner was forced to commence the case and filed a Complaint. The case was referred to mediation but the same proved to be futile.<sup>[49]</sup>

The assailed Decision<sup>[50]</sup> was rendered by the trial court on 19 July 2012. Not satisfied with the said Decision, herein petitioner filed a Motion for (1) Partial Reconsideration; and (2) to Deposit Check Payment which was resolved by the said court in its 4 October 2012 Resolution, the decretal portion thereof:

***WHEREFORE,*** *plaintiff's motion for partial consideration is hereby denied for utter lack of merit.*

*As to the prayer to allow deposit of the check to court in the meantime that plaintiff is yet to determine the outstanding condominium dues to be paid to defendant as ordered by the court in the Decision dated July 19, 2012, the resolution of the same is hereby held in abeyance. Instead, plaintiff and defendant are hereby ordered to appear before this court for reconciliation and exact determination of the amount due and payable to defendant on October 30, 2012 at 2:00 P.M.*

***SO ORDERED.***

Feeling aggrieved with the Resolution, petitioner is now before this Court laying the following issues<sup>[51]</sup> setforth in the petition:

**I.**

**WHETHER OR NOT PARKING SPACE NO. 7 HAD BEEN NON-EXISTENT EVEN AS AT THE FILING OF THE COMPLAINT BELOW ON NOVEMBER 27, 2006, AND THAT RESPONDENT'S ATTEMPT TO MAKE IT APPEAR THAT IT HAS EXISTED FOR SOME TIME IS A MERE AFTERTHOUGHT TO HAVE KNOWN OF ITS CONDITION WHEN IT ACQUIRED IN 1982, UNITS E-1 AND E-2 OF THE FIFTH FLOOR OF THE DOMINION CONDOMINIUM, AS ERRONEOUSLY CONCLUDED BY THE TRIAL;**

**II.**